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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Billed Party Preference)
for 0+ InterLATA Calls)

CC Docket No. 92-77

COMMENTS OF INTERNATIONAL TELECHARGE, INC.

Respectfully submitted,

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June 2, 1992

No. of Copies rec'd 074
List A B C D E

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COMMENTS OF INTERNATIONAL TELECHARGE, INC.

SUMMARY

As demonstrated in CC Docket No. 91-115 and the record

¹ Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, FCC 92-169 (rel. May 8, 1992).

compiled in response to the CompTel Motion², AT&T's CIID card program coupled with its deceptive marketing campaign, has had a devastating impact on operator services competition and, if permitted to continue unabated, will have the effect of entrenching AT&T in the premises presubscription market. Unless the Commission grants all interexchange carriers ("IXCs") nondiscriminatory access to validation and billing for all 0+ proprietary cards, including AT&T's CIID cards, AT&T will shortly succeed in remonopolizing 0+ operator services. If this occurs, for the two year or longer period preceding the possible implementation of billed party preference, operator services competition will have been permitted to return to its pre-divestiture state -- one IXC provider of 0+ communications with limited calling card competition from the major 1+ service providers.

Unless the Commission preserves competition in the existing premises presubscription market, it is very unlikely that billed party preference will have a sufficiently great impact on operator services to justify its enormous costs. Although billed party preference will allow IXCs other than AT&T to offer their customers the convenience of 0+ calling cards, the competitive structure of operator services is likely to mirror the 1+ market as it is today

² Emergency Motion of the Competitive Telecommunications Association for an Interim Order Requiring AT&T to Cease Further Distribution of "Proprietary" CIID Cards and Permit Validation and Billing of Existing Cards Pending a Final Decision in this Docket, CC Docket No. 91-115 (filed Dec. 20, 1991) ("CompTel Motion"). The CompTel Motion was co-signed by 19 CompTel members, including ITI.

-- a close oligopoly of the major 1+ carriers which will simply leverage their 1+ market share into the 0+ market. The diversity and innovation that has characterized the operator services market will be lost. Accordingly, in order to preserve competition both for the present and the future, the Commission must permit nondiscriminatory access to validation and billing of proprietary 0+ calling cards.

I. IN ORDER TO ENSURE THE EXISTENCE OF VIABLE COMPETITORS IN A BILLED PARTY PREFERENCE ENVIRONMENT, THE COMMISSION MUST PRESERVE FAIR COMPETITION IN TODAY'S PRESUBSCRIPTION ENVIRONMENT

A. For the Foreseeable Future, OSPs Must Compete In a Marketplace Defined by Presubscription

In the NPRM in this proceeding, the Commission found that "[i]t appears that billed party preference could benefit the users of operator services by implementing the billed party's choice of carrier without complicated dialing requirements on "0" calls and by redirecting the focus of OSP competition for public phone traffic towards the end user and away from the recipient of 0+ commissions."³ Although ITI has serious reservations about the cost-effectiveness of implementing a system of billed party preference, it recognizes the legitimate goal of refocusing competition on the consumer and lowering rates.⁴

³ Notice, para. 13.

⁴ Throughout these comments, ITI assumes, based upon the Commission's tentative conclusions in the Notice, that the Commission intends to require implementation of billed party preference. However, ITI has serious doubts about the public interest benefits of billed party preference when weighed against

The existing marketplace is defined by the system of presubscription whereby traffic aggregators, such as hotels, hospitals and payphones, presubscribe their lines to a specific operator service provider. The presubscribed OSP automatically receives all 0+ traffic originating from the aggregator's telephones and, in return, pays the aggregator commissions, usually based on a percentage of revenues obtained from the telephone. Alternatively, the OSP often collects a surcharge from the end user on behalf of the aggregator.

As the operator services marketplace has expanded, competition for aggregator locations has become intense. Presubscription at aggregator locations often goes to the entity able to offer the highest commissions, frequently AT&T, or willing to collect the highest surcharge. In addition, many OSPs, such as ITI, have been forced to enter arrangements with independent sales agents which effectively control the 0+ presubscription rights of numerous lucrative properties. These agents exact their own commission or surcharge from the end user in addition to the surcharge or commission demanded by the aggregator. The impact of this competitive structure sometimes leads to higher rates for consumers. However, it also has lead to lower revenues for OSPs, including ITI, who are forced to pay out an increasingly large proportion of revenues in commissions and surcharges to remain

the enormous costs, and reserves the right to oppose the concept in future comments.

competitive.⁵

The most recent upward force on OSP rates has been exerted by the increased costs and lost revenues attributable to widespread use of AT&T's CIID card. As end users increasingly use their 0+ CIID card in response to AT&T's deceptive marketing campaign, competitive OSPs lose revenues and incur unrecoverable validation and access costs. Moreover, they are subject to constant pressure from aggregators and agents to raise rates to make up for lost volume and, therefore, lost commissions. ITI often faces the uncomfortable dilemma of raising rates to replace lost revenue or losing customers. Accordingly, ITI agrees that if changes must be made to the structure of both the existing and future operator services marketplace to assert a downward influence on rates, elimination of the competitive inequities caused by AT&T's CIID card could have such an effect.

ITI was a pioneer in opening the operator services marketplace to competition and intends to be a competitor in the future operator services market, no matter how that market is defined by technology or regulation. Nevertheless, for the foreseeable future -- during the pendency of the Commission's deliberations in this docket on billed party preference and the possible, subsequent implementation of technical changes -- ITI, like all OSPs, must

⁵ ITI has recently undertaken efforts to lower its rates by modifying its arrangements with certain agents and aggregators.

continue to struggle to compete in the existing market as it is defined by presubscription. If this docket is to have any future significance, the Commission must adopt policies which will ensure that no carrier gains an undue advantage. Accordingly, the Commission must take steps to prevent AT&T's remonopolization of operator services through its CIID card program.

B. If Permitted to Continue Unabated, AT&T's Anticompetitive CIID Card Program Will Eliminate Operator Services Competition in the Presubscription Market

The major obstacle to the continuation of fair operator services competition during the pendency of this proceeding is the discriminatory advantage that AT&T obtains in the aggregator marketplace through its CIID card program. The record in CC Docket No. 91-115 and the comments filed on the CompTel Motion demonstrate that AT&T has engaged in false and deceptive marketing practices in order to induce end users, which find the CIID card more difficult to use than line number cards, to switch to the CIID card. Further, AT&T has leveraged its dominance in the calling card market, along with the customer confusion occasioned by its misleading CIID card marketing scheme, into the aggregator marketplace in order to force aggregators to presubscribe to AT&T. If AT&T is permitted to continue its CIID card plans unabated, it will succeed in remonopolizing operator services.

1. AT&T Has Engaged In a False and Misleading Marketing Campaign for its CIID Cards

The record developed by the Commission on the CompTel Motion is replete with examples of AT&T's unlawful marketing practices. In the CompTel Motion, CompTel described for the Commission AT&T's false claims in letters to customers and conversations with callers to its 800 number that the change to the CIID card was necessary for AT&T "to comply with government regulations."⁶ Moreover, CompTel explained that AT&T service representatives were informing customers that, after January 1, 1992, their existing line number cards would not work.⁷ In response to CompTel's Motion, the BOCs provided further disturbing evidence of AT&T's deceptive marketing practices.

For example, Bell Atlantic wrote:

AT&T has agreed to honor the Bell Atlantic calling card. However, over the past several months, Bell Atlantic has received numerous questions and complaints from consumers that AT&T sales representatives have told them that they would no longer be able to use their Bell Atlantic calling card to charge AT&T calls. We understand that AT&T operators have been making similar statements. AT&T representatives have also told consumers that "FCC regulations" would prevent them from using their line-number based cards.

These sales practices have not been limited to the general consumer marketplace. Rather, AT&T is also making statements of this sort to large business customers. For example, in December, an AT&T account executive told Bellcore that

⁶ CompTel Motion at 5-6.

⁷ Id.

the Bell Atlantic calling cards used by Bellcore employees would not work after January 1 and that New Jersey Bell would no longer bill for AT&T. Bellcore, a comparatively sophisticated consumer, knew enough to call Bell Atlantic to verify AT&T's representations. Many other consumers surely simply took AT&T at its word.

AT&T also used its position as the owner of the validation database that was shared by it and the Bell companies to identify customers who used their Bell Atlantic calling card to make large numbers of calls and to market its CIID card to them. In October, AT&T for no apparent reason, significantly lowered the usage thresholds for the cards in the shared database. This allowed AT&T to identify callers who were using their cards frequently. AT&T then called these customers, including customers who had only a Bell Atlantic card and not an AT&T card, and tried to sell them an AT&T CIID card. In many instances, AT&T convinced the customer to switch to AT&T.

AT&T's marketing efforts have been successful. Ninety one percent more business customers cancelled their Bell Atlantic calling cards in November 1991 than during the same period in 1990. Bell Atlantic can only assume that many more customers did not bother to call Bell Atlantic, but rather simply destroyed their Bell Atlantic cards.⁸

Similarly, Southwestern Bell informed the Commission:

Comptel is not the only party with concerns about AT&T's calling card practices. Customers with AT&T and/or SWBT telephone line number based calling cards have received information from AT&T advising them that: "in order to comply with government requirements, AT&T is no longer sharing card numbers with your local telephone company. . . Your calling card is a telecommunications charge card. It replaces

⁸ Bell Atlantic's Response to CompTel's Motion Concerning CIID Calling Cards at 1-3, CC Docket No. 91-115 (filed Feb. 10, 1992) (emphasis supplied) (footnote omitted).

your current AT&T card. For your protection, destroy your old card."

SWBT is unaware of any such government requirements.

These statements have led some customers to believe incorrectly that their SWBT cards will no longer be usable on the AT&T network, and that they should destroy their existing SWBT cards. This is untrue. Because of a mutual honoring agreement between SWBT and AT&T, SWBT cards will continue to be accepted on AT&T's network, and AT&T proprietary cards will be accepted on SWBT's network. AT&T's decision to issue proprietary cards was a business decision, not a government requirement.

Several of SWBT's large corporate customers have received letters from AT&T stating: "All existing line based (LEC billed) cards will go out of existence January 1, 1992. Unless other arrangements are made (i.e., conversion to SDN cards), users will be sent AT&T corporate cards before the end of the year." This is also incorrect. As a result of the confusion, SWBT has been forced to incur the expenses of notifying its customers that SWBT calling cards are valid on the vast majority of IXC networks, including AT&T's.

Other AT&T actions have led SWBT to conclude that AT&T may be attempting to displace the SWBT calling card product. AT&T has issued a number of orders to disconnect, and not re-issue, both AT&T and SWBT calling cards for reasons of "lost or stolen." Random SWBT follow-ups, as well as customer complaints/inquiries, have revealed that the cards in question were not "lost or stolen." AT&T has also requested SWBT to issue bulk disconnect orders on AT&T telephone number cards.⁹

⁹ Comments of Southwestern Bell Telephone Company in Response to Emergency Motion of Competitive Telecommunications Association at 6-7, CC Docket No. 91-115 (filed Jan. 28, 1992) (emphasis supplied).

The Ameritech Companies wrote:

[The Ameritech Operating Companies] support the comments of those parties, including CompTel, which have clearly demonstrated AT&T's misleading and false marketing of its CIID calling card.

Customers of the Ameritech calling card have also expressed confusion and anger over AT&T's practices. AT&T's behavior has included written materials to Ameritech calling card customers that mislead customers into thinking that they must accept the AT&T CIID card by stating: "In order to comply with government requirements, AT&T is no longer sharing card numbers with your local telephone company", "As a result of government requirements AT&T is issuing new cards with exclusive numbers"; and "in the past AT&T has shared card numbers with your local phone company. Now as a result of government requirements, this arrangement must end."

AT&T has also created confusion by informing customers that line number cards will be invalid as of January 1, 1992 and that line number cards will not be accepted for international calls. Clearly these claims are false. AT&T's decision to issue CIID cards was purely a business decision, not the result of any government regulation.

In addition, AT&T's creation of the customer perception that line numbered cards will no longer be accepted on AT&T's network is directly contrary to the terms of the mutual card honoring agreement between the Ameritech Operating Companies and AT&T. That agreement also requires that line numbered cards be accepted by AT&T for international calls. Complaints and customer confusion have also been created by AT&T's misleading use of the term "old AT&T card" in encouraging customers to destroy their current LEC line number card and replace it with a CIID card.

* * *

AT&T's behavior as described in this docket has gone beyond the legitimate promoting of a competitive service but instead has preyed upon consumer confusion over calling cards. The similarity of the experience of LECs, as demonstrated by the comments, leads one to question whether these practices are intentional.¹⁰

In their Comments in CC Docket No. 91-115, the NYNEX Companies stated:

In the Comments filed on February 10, 1992, several BOCs (Bell Atlantic, Pacific Bell and Southwestern Bell) expressed concern about AT&T's calling card marketing practices. The NTC's have the same concern. The NTC's have received a number of questions and complaints from customers who have been told by AT&T representatives that their NTC calling cards will no longer work. In response to these incorrect statements by AT&T, the NTC's have had to spend a significant amount of money writing to their customers to assure them that their NTC calling cards are still valid. AT&T has ignored the NTCs' requests to cease its misleading marketing practices.¹¹

In addition, in their Comments in the FCC's proceeding concerning CIID Card discounts offered to optional calling plan ("OCP") customers, the NYNEX Companies stated:

As a result of AT&T's controversial marketing practices, many customers are under the impression that their LEC cards are no longer valid. . . .If LEC calling cards are abandoned by customers in favor of AT&T CIID cards, more

¹⁰ Reply Comments of the Ameritech Operating Companies at 2-3, CC Docket No. 91-115 (filed March 11, 1992) (emphasis supplied).

¹¹ Reply Comments of the NYNEX Telephone Companies at 1-2, CC 91-115 (filed Mar. 11, 1992) (emphasis supplied).

premise owners may be encouraged to presubscribe their phones to AT&T, thus depriving public telephone users of the benefits of competition.¹²

The Pacific Companies also supported the claims of deceptive marketing set forth in the CompTel Motion:

The Pacific Companies have received many questions and complaints from its customers concerned about the continued availability and acceptance of their line number based calling cards. Pacific wants to ensure that its customers know that their line number based cards will continue to be accepted by all IXCs and that any suggestions to the contrary cease.¹³

Finally, BellSouth also supported CompTel's claims:

Other BOCs have described AT&T marketing strategies designed to discourage use of line based calling cards. . . . Suffice it to say, these techniques have been employed in the BellSouth region.¹⁴

The comments of the BOCs on the CompTel Motion demonstrate the depth of the competitive impact that AT&T's deceptive CIID card

¹² Comments of the NYNEX Telephone Companies on AT&T's Direct Case at 6, AT&T Communications, Transmittal Nos. 3380, 3537, 3542, and 3543, (filed Feb. 27, 1992).

¹³ Comments of Pacific Bell and Nevada Bell in Response to CompTel's Emergency Motion for an Interim Order at 2, CC Docket No. 91-115 (filed Feb. 10, 1992).

¹⁴ BellSouth Opposition to Direct Case at 9 n.12, AT&T Communications, Transmittal Nos. 3380, 3537, 3542, and 3543, (filed Feb. 27, 1992). See also Reply Comments of the Saco River Telegraph and Telephone Company in response to Comments on the Emergency Motion Competitive Telecommunications Association, et. al, CC Docket No. 91-115 (filed March 10, 1992).

marketing practices have had on consumers and competitors alike. Through blatantly false statements in its marketing literature, AT&T has induced consumers into believing that their LEC-issued cards no longer work. As a result, many consumers have discarded their preferred, easy-to-use line-number cards in favor of the CIID card. Since competitive OSPs like ITI cannot accept the CIID card, AT&T's market interference has deprived them of revenues, imposed unrecoverable costs, and created severe competitive inequities in the aggregator marketplace.

2. AT&T Has Used the Unfair Advantage Gained in the Calling Card Market to Regain Market Share in the Presubscription Market

As part of its CIID card program, AT&T also has launched an extremely aggressive marketing campaign aimed at aggregators presubscribed to AT&T's competitors. The comments submitted in CC Docket No. 91-115 provide numerous examples of AT&T's attempts to persuade aggregators that, with AT&T's issuance of up to 40 million CIID calling cards which no other carrier can validate or bill, their commissions will drop precipitously if they remain with an OSP other than AT&T. Moreover, the marketing literature uses the frustration which AT&T's CIID card program is causing to AT&T's own customers as leverage to induce aggregators to presubscribe to AT&T.

A few of the many examples of AT&T marketing literature are summarized below:

- * In a memorandum entitled "AT&T Calling Card Marketing Plans", AT&T wrote:

AT&T's Calling Card Marketing Plans call for AT&T to reissue its 30 million active calling cards. The new calling card is referred to as the CIID Calling Card. . . . The CIID Calling Card can only be validated and billed by AT&T. Therefore, if a property has any carrier other than AT&T, the end user will have to dial around the existing long distance carrier using AT&T's 10288 access code to place his calling card call.

Mass media advertisements and direct mail programs will insure that AT&T calling card holders are aware of how to reach AT&T by dialing AT&T's 10288 access code.

* * *

Since other long distance carriers are unable to validate and bill the CIID card, the property owner's total billable commission revenue will be impacted.¹⁵

- * In a letter from an AT&T account representative to a hotel customer, dated February 7, 1992, AT&T writes:

In 1991, AT&T will be converting 40 million card users to the new AT&T Proprietary calling card. This new card can only be validated by AT&T and the Local Exchange Companies. The billing on this new card will only be handled by AT&T.

You mentioned the possibility of changing your long distance carrier to U.S. Sprint. Ninety percent of your card traffic would be at risk for commission. Sprint will not be able to accept or validate the new AT&T card. On the back of the new card will be dialing instructions when placing a call from a phone not using AT&T.

We share the same customers and AT&T would like to continue providing them with the long

¹⁵ See Attachment A hereto (originally submitted with Comments of MCI Telecommunications Corporation, CC Docket No. 91-35 (filed April 12, 1991) and Comments of Telesphere Communications, Inc., CC Docket No. 91-115, Attachment A (filed Aug. 15, 1991).)

distance services that they are used to having while staying at the (name deleted).¹⁶

- * In marketing literature entitled "Benefits", AT&T writes:

AT&T currently has over 40,000,000 Calling Cards in use today.

AT&T is moving quickly towards an all proprietary card network. The move towards these cards will begin with our largest usage customers. This tends to be the business traveler. OTHER COMPANIES CANNOT BILL FOR THESE CALLS AND DO NOT PAY COMMISSIONS ON CALLS MADE WITH THESE CARDS.

* * *

As an agent, (name deleted) wants to ensure their customer enjoyed the visit enough to make another stay at the hotel. You would not want to take the chance of losing that guest because a customer was dissatisfied with the phone service.¹⁷

- * In a marketing document entitled "The Proprietary Advantage, AT&T Calling Cards", AT&T writes:

You frustrate your guests by not using AT&T as your primary carrier and you may also lose commissions on each one of those calls. And AT&T's proprietary customer base is still growing.

* * *

The implications for your hotel are clear. The potential revenue you can earn from other long distance companies decreases with every AT&T proprietary card issued. And the potential for customer dissatisfaction

¹⁶ See Attachment B hereto (originally submitted with Comments of MCI Telecommunications Corporation, CC Docket No. 91-35 (filed April 12, 1991) and Comments of Telesphere Communications, Inc., CC Docket No. 91-115, Attachment A (filed Aug. 15, 1991).)

¹⁷ See Attachment C hereto (originally submitted with Comments of MCI Telecommunications Corporation, CC Docket No. 91-35 (filed April 12, 1991) and Comments of Telesphere Communications, Inc., CC Docket No. 91-115, Attachment A (filed Aug. 15, 1991).)

increases with every extra step your guests have to take just to make a phone call.¹⁸

Many more examples of AT&T's marketing efforts to aggregators may be found in the record in CC Docket No. 91-115. Each of these demonstrate how AT&T -- which has convinced customers to adopt the CIID card through false and deceptive means -- is using its tremendous advantage in the calling card market to remonopolize operator services. These efforts are an abuse of market power and must be stopped by the Commission unless it intends for operator services to return to its pre-divestiture monopoly state.

3. AT&T's CIID Card Program Unlawfully Discriminates in Favor of Local Exchange Carriers

Although AT&T refuses to allow any other IXC to validate or bill its CIID cards, it permits the LECs to validate and bill the cards for intraLATA calling. Since IXCs compete with the LECs for intraLATA service in many of the states, this discrimination grants the LECs an unfair advantage.

Moreover, as pointed out in the comments of the American Public Communications Council ("APCC") on the CompTel Motion, allowing the LECs to validate and bill the CIID card "encourages consumers to use the card as a universal '0+' card because it allows the card to be used for 0+ intraLATA dialing at any LEC payphone, as well as for 0+ interLATA dialing at all payphones

¹⁸ See Attachment D (originally submitted with the Comments of Telesphere (Attachment B)).

presubscribed to AT&T."¹⁹ This creates customer confusion, since most consumers are not aware of whether their call will cross LATA boundaries or not. Granting all IXCs the ability to validate and bill the CIID cards on a nondiscriminatory basis will eliminate this confusion as customers would always be able to use their cards on a 0+ basis, whether or not the call is intraLATA and no matter which carrier is presubscribed to the telephone.

4. If AT&T is Permitted to Remonopolize to Operator Services Through its Unlawful CIID Card Program, It is Likely that Billed Party Preference Will Be Rendered Unnecessary

AT&T's CIID card program and deceptive marketing practices are an abuse of monopoly power. First, only AT&T has the market power and market share to issue proprietary calling cards that operate on a 0+ basis in the existing presubscription environment. In order to offer customers 0+ calling cards, an IXC must be able to ensure that customers can reach the IXC's network by dialing 0+ the number in the vast majority of cases. Only AT&T -- the presubscribed carrier for at least 75 percent of all aggregator locations -- has sufficient market power in the aggregator marketplace to even consider issuing a 0+ proprietary card. Therefore, AT&T's claims that its CIID card program is nondiscriminatory because any other IXC could issue 0+ CIID cards is disingenuous.

¹⁹ Comments of the American Public Communications Council on ComTel's Emergency Motion at 7, CC Docket 91-115 (filed Feb. 10, 1992).

Second, only an IXC with enormous market power could risk a marketing campaign largely based on misleading, confusing and frustrating that IXC's own customers. As demonstrated in AT&T's marketing research on the CIID card, AT&T anticipated "strong resistance" to the introduction of the CIID card.²⁰ In the Spring of 1990, AT&T tested consumer attitudes toward non-telephone line number cards. AT&T found that:

Current AT&T Cardholders expressed strong resistance to the introduction of the new non-Telephone Line based card largely due to the perceived inconvenience of using a calling card which is not based on the home phone number. Few cardholders feel that they will be able to memorize a random series of numbers. Most feel this change will necessitate their constant and inconvenient referral to the card whenever they place a call.²¹

Obviously, AT&T's false claims that the CIID card was necessitated by "government regulation" and that the old line number cards would not work were designed to overcome customer objections to the less convenient CIID card.

Third, it is clear that AT&T was willing to introduce the CIID card at the expense of its own customers' convenience in order to use the inevitable customer frustration to regain market share in the aggregator market. As demonstrated above, AT&T's own marketing literature capitalizes on the confusion which the CIID card is causing by warning aggregators that AT&T customers will be

²⁰ AT&T Supplemental Filing, Transmittal No. 2902 (Exhibit 1) (May 29, 1991) (originally submitted with Comments of Capital Network Systems, Inc., CC Docket No. 91-115 (Aug. 15, 1992).)

²¹ Id. at 2.

frustrated when attempting to use their CIID cards from locations subscribed to competitors.

As a result of AT&T's success in misleading its own subscribers and strongarming its competitors' aggregator customers, AT&T has gained an enormous unfair advantage in the presubscription market. It has not gained this advantage through fair competition based on informed customer choice, but rather through an abuse of its market power and the deception of customers. Unless this unfair advantage is cured by the Commission, AT&T will succeed in further remonopolizing operator services.

If AT&T is permitted to succeed in its remonopolization efforts, the 0+ operator services market will revert back to its pre-divestiture status. Thus, not only will competition be eliminated for the foreseeable future, it is also likely to be very limited in a billed party preference environment. AT&T will be the only IXC providing 0+ communications and will face only minor competition from the calling cards of its major 1+ competitors. Today's operator service competitors, such as ITI, will lose their entire investment in the operator services industry, only to have to start from scratch in the billed party preference environment.

Under the circumstances, if the market returns to a monopoly, it is highly questionable whether billed party preference will have a major impact on competition. Although billed party preference will allow IXCs other than AT&T to offer their customers the convenience of 0+ calling cards, the competitive structure of

operator services is likely to mirror the 1+ market as it is today -- a close oligopoly of the major 1+ carriers which will simply leverage their 1+ market share into the 0+ market. The diversity and innovation that has characterized the operator services market will be lost as the major IXCs comfortably slice up the marketplace.

As described further below, the only way to restore competition in the operator services marketplace for the interim period during the consideration and possible implementation of billed party preference is to order AT&T to provide all IXCs with nondiscriminatory access to CIID card validation and billing data.

II. AS LONG AS PRESUBSCRIPTION DEFINES THE MARKETPLACE, ALL 0+ CALLING CARDS MUST BE PLACED IN THE PUBLIC DOMAIN

A. Declaring All 0+ Calling in the Public Domain Pending Possible Implementation of Billed Party Preference Would Increase Customer Choice

In this docket, the Commission has tentatively concluded that billed party preference is in the public interest. One benefit of billed party preference identified by the Commission is that the technology will automatically route all 0+ CIID proprietary cards to the issuing carrier.

However, in today's presubscription environment -- and, hence, for the foreseeable future -- 0+ calls are automatically routed to the IXC presubscribed to the originating telephone. Under presubscription, every time an AT&T customer uses a CIID card on a 0+ basis at a location presubscribed to a carrier other than

AT&T, that call is automatically routed to the presubscribed carrier, not AT&T. And, every time this occurs, the presubscribed carrier incurs numerous costs, including access charges, switch time, operator time, and, possibly, verification costs. Since the IXC cannot validate or bill a CIID card call, these costs cannot be recovered from the cost-causer -- the AT&T customer -- but instead, must be recovered from other, non-CIID customers in the form of higher rates.

The only practical solution to the competitive problems created by AT&T's proprietary card is to declare that, so long as presubscription defines the operator services marketplace, all 0+ calling must be in the public domain. Under this scenario, all IXCs receiving 0+ calling card calls would be permitted to bill and validate them. Carriers would still be free to issue true proprietary cards, those that do not operate on a 0+ basis, but rather rely on access codes to route the call to the issuing carrier. Moreover, AT&T could continue its extensive advertising campaign to educate its customers to dial 10288-0 to reach AT&T whenever they are using a telephone presubscribed to a carrier other than AT&T.²² However, any carrier that receives a 0+ CIID card call would be permitted to validate and bill it.

²² Indeed, AT&T is reported as stating that "the longer dialing sequence won't deter callers... 'Customers have become used to [dialing 10288] to reach AT&T,' said company spokeswoman Ellen Zundl." "AT&T Introduces '700' PCS-Type Numbers", FCC Report at 3,4 (May 4, 1992).

Declaring all 0+ calling to be in the public domain is also fully consistent with the terms and objectives of the Telephone Operator Consumer Services Improvement Act Of 1990 ("TOCSIA")²³ and the Commission's rules and regulations adopted thereunder. These provisions are designed to ensure maximum consumer choice in the presubscription environment by requiring aggregators and OSPs to provide notice of the identity of the presubscribed carrier through posting and branding and by prohibiting blocking of access to competing carriers. Under this regulatory structure, where the consumer is ensured knowledge and access, it can almost be presumed that by dialing 0+ the number, the consumer has knowingly chosen the presubscribed carrier or, at a minimum, the consumer has chosen to utilize the convenience of 0+ dialing over the extra digits associated with access codes.

As an alternative to requiring AT&T to permit billing and validation of the CIID card, the Commission has proposed requiring AT&T customers to dial an access code for all CIID card calls -- even those originating at telephones presubscribed to AT&T. This alternative is inefficient, artificial and is unlikely to resolve fully the cost problems associated with use of CIID cards on a 0+ basis at non-AT&T locations.

AT&T's CIID card is, by design, a 0+ billing card rather than a routing card. It is entirely artificial to try, at this point,

²³ 47 U.S.C. 226.

to transform it into a proprietary routing card, since, no matter what customers are instructed to do, if used on a 0+ basis the CIID card will always access the presubscribed carrier with the inevitable incurrence of attendant costs. Although ITI could program its switches to block CIID card calls at the switch, it must still incur access charges and, possibly, operator time, dealing with these customers.

Declaring 0+ in the public domain for the interim period would have a positive overall impact on consumers. In the Notice, the Commission asks the parties to comment on "how and by whom the choice between a proprietary access and a nonproprietary 0+ card should be made."²⁴ Clearly, these choices should be left to the consumer, not to carriers attempting to recoup market share at their customers' expense. If 0+ calling is declared in the public domain, consumers desiring to reach AT&T could still do so through 0+ access at phones presubscribed to AT&T and through access codes at locations presubscribed to other carriers. Moreover, those desiring the convenience of 0+ dialing at locations presubscribed to carriers other than AT&T would have that additional choice available with their CIID card.

On the whole, therefore, permitting all IXC's access to validation and billing for proprietary 0+ cards, pending the possible implementation of billed party preference, will increase

²⁴ NPRM para. 43.